



POLICE DEPARTMENT

October 29, 2014

MEMORANDUM FOR: Police Commissioner

Re: Detective James Famiano
Tax Registry No. 936568
Narcotics Borough Brooklyn North
Disciplinary Case Nos. 2013-10682

Detective Emrah Ates
Tax Registry No. 942967
Narcotics Borough Brooklyn North
Disciplinary Case No. 2013-10683

The above-named members of the Department appeared before me on June 4, 2014, charged with the following:

Disciplinary Case No. 2013-10682

1. Said Police Officer James Famiano, on or about June 14, 2012, at approximately 2200 hours while assigned to the Narcotics Borough Brooklyn and on duty in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department in that he stopped the vehicle in which Terrence Forte was an occupant without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

2. Said Police Officer James Famiano, on or about June 14, 2012, at approximately 2200 hours while assigned to the Narcotics Borough Brooklyn and on duty in the vicinity of [REDACTED] County, abused his authority as a member of the New York City Police Department in that he wrongfully and without just cause frisked Terrence Forte without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

3. Said Police Officer James Famiano, on or about June 14, 2012, at approximately 2200 hours while assigned to the Narcotics Borough Brooklyn and on duty in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department in that he wrongfully and without just cause searched Terrence Forte without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 3 – STOP AND FRISK

Disciplinary Case No. 2013-10683

1. Said Detective Emrah Ates, on or about June 14, 2012, at approximately 2200 hours while assigned to the Narcotics Borough Brooklyn and on duty in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department in that he stopped the vehicle in which Terrence Forte was an occupant without sufficient legal authority.

PG 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Heather Cook, Esq., and Raasheja Page, Esq. Respondents Famiano and Ates were represented by Michael Lacondi, Esq.

Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-10682

Respondent Famiano is found Guilty.

Disciplinary Case No. 2013-10683

Respondent Ates is found Guilty.

The CCRB's Case

The CCRB called Terrence Forte as its sole witness.

Terrence Forte

Forte is a resident of [REDACTED]

[REDACTED]. Forte testified that he drove and pulled up near his residence, after his neighbor had pulled up and parked with his [neighbor's] flashers on. Forte then pulled his car in front of his neighbors and also put his flashers on. He spoke to his neighbor briefly as he proceeded to open the gate to his driveway. As he attempted to walk back to his car, a white van approached. Forte said he motioned with his hand and said to the driver of the van that he was pulling into his driveway. As Forte went to his vehicle and attempted to back into his driveway, the van pulled ahead. Forte testified that he uttered words to the effect to the van driver, "You should have hit me." Forte testified credibly that the van was a white van, with no markings indicating that it was a police vehicle. He did not know the occupants were police until they passed him, parked their vehicle and returned to approach him.

At that time, Forte stated that he was ordered out of the vehicle, told to place his hands on top of the van, was frisked and searched in that Respondent Famiano removed his wallet from his pocket and removed his ID. When completed, Forte stated the officer put his documents on top of his vehicle and left the location. He was not arrested, issued a summons or told the basis for the search. Following the search, Forte then proceeded to reverse his car into his driveway and close his gate.

Respondents' Case

Respondents testified in their own behalf.

Respondent Famiano

Respondent Famiano has been a detective in Brooklyn North Narcotics for two and a half years. He has been with the Department for nine and half years.

On June 14, 2012, Respondent Famiano was assigned to the Brooklyn North Narcotics in the confines of the 75 Precinct. He was working at around 10:00 p.m. and was assigned to drive a white, unmarked prisoner van with Respondent Ates. They were transporting prisoners to the 75 Precinct. Respondent Famiano stated that there were about five to eight prisoners in the van but he did not recall the exact amount. The weather at that time was hot and humid and the prisoners were very agitated.

While driving down [REDACTED] Respondent Famiano observed a car parked at an angle blocking traffic and he could not get through. Respondent Famiano beeped his horn because he could not move the prisoner van. He eventually was able to move forward when Forte moved his car.

Respondent Famiano stated that before Forte moved his car, he [Forte] was loud and cursing at him. Eventually Forte moved his vehicle and Respondent Famiano went in front of him. Before he moved the prisoner van in front of Forte, Respondent Famiano identified himself as a police officer with his shield and he was also wearing a Department windbreaker which had "Police" written straight across the front of windbreaker and on the sleeves.

Forte moved his vehicle by parking it in front of a fire hydrant. At that point, there was enough space for Respondent Famiano to get through. As Respondent Famiano was passing through, Forte said, "I don't give a fuck who you are." After that, Respondent Famiano proceeded to park and exit the van on the corner of [REDACTED]

[REDACTED] Respondent Famiano was stopping Forte individually not his vehicle. Respondent Famiano stated that it was against procedure to do car stops in the vehicle that was being used. If they were going to pull a vehicle over, they would park behind the vehicle but in this case they parked in front of him.

Respondent Famiano and Respondent Ates got out of the van and approached Forte who was also exiting his vehicle. As Forte was exiting his vehicle, Respondent Famiano told him to put his hands on top of the car. Respondent Famiano stated that he patted Forte down for "safety reasons" because of Forte's demeanor. Respondent Famiano said, "He was very irate, even when I approached the car. He said, 'Why the fuck are you here?'" Respondent Famiano said that this was not a traffic stop. Respondent Famiano patted Forte down and asked for his identification. During this time, Respondent Ates was close.

Respondent Famiano explained to Forte what occurred and Forte understood. During this time, other people started to appear. Respondent Famiano said that "There was a traffic infraction" and that Forte was acting disorderly as well. The traffic infractions were for double parking and parking by a fire hydrant. Respondent Famiano stated that it was important for him to get down the street because he had prisoners in the van who were also acting irate.

Forte gave Respondent Famiano his ID but not his registration. Respondent Famiano warned and admonished Forte but did not issue him any summonses. Respondent Famiano stated that Forte was "very compliant." After the incident, Respondent Famiano proceeded to the 75 Precinct.

On cross-examination, Respondent Famiano stated that he was in an unmarked prisoner van. There was no red light in the vehicle that can be placed on the dashboard if there was an emergency. Respondent Famiano and Respondent Ates were in plain clothes. Respondent Famiano had a windbreaker on which said, "Police," but Respondent Ates did not have a windbreaker on.

Respondent Famiano stated that on that night he was transporting the prisoners. The van was hot and the air conditioning was not working. At least one of the prisoners was complaining about being claustrophobic. Respondent Famiano was asked if it was an emergency to back to the precinct. Respondent Famiano said, "I don't know about that."

On May 7, 2013 Respondent Famiano was interviewed at CCRB. Respondent Famiano stated in that interview that "[Forte] was blocking the traffic and we needed to leave. It just it was almost an emergency." Respondent Famiano testified that it was urgent. The precinct was right around the corner [REDACTED] which was approximately a block away.

Respondent Famiano stated that when Forte exited his vehicle he was cursing, yelling and screaming in an irate manner. Respondent Famiano agreed that Forte was not swinging his hands nor was he making a move like a gun. Forte was not reaching into his

waistband and he was not swinging a fist. Forte was cursing at Respondent Famiano and pointing in a direction after Respondent Famiano identified himself.

Respondent Famiano was in his vehicle behind Forte when Forte got out of his car. The lights from Respondent Famiano's van were illuminating the street in front of him. At that time, Respondent Famiano did not see a bulge on Forte. Forte got out of his vehicle and went to his gate. Respondent Famiano stated that when Forte was walking back to his vehicle, Forte said, "I don't give a fuck who you are," and he felt the language was hostile toward him.

Respondent Famiano was not in fear for his safety when Forte went from his gate back to his vehicle to move it. Respondent Famiano agreed that if someone is blocking the road it can be a traffic infraction. Respondent Famiano stated that the reason he decided to get out and speak to Forte was because of the traffic infraction and because of Forte's behavior.

Respondent Famiano stated that after he was shown the video of the incident (Department's Exhibit [DX] 1), it was his testimony that he actually had an entire interaction with Forte involving Respondent Famiano beeping his horn that occurred in the one to two minutes prior to when the security camera video begins.

When Respondent Famiano approached Forte's vehicle, Forte was still cursing at Respondent Famiano and moving his arms. Forte stepped out of the vehicle while Respondent Famiano was approaching the vehicle. Respondent Famiano put his hand on the door when Forte was opening it from the inside. Respondent Famiano put his hand on the door because he did not understand why Forte was opening the door. At that

point, Respondent Famiano had not asked Forte to step out of the vehicle, he was just doing it on his own.

Respondent Famiano testified that as he was approaching Forte, he had just told Forte to put his hands on the car. At that point, Forte was cursing at him. Forte was stating, "What the fuck do you want?" Respondent Famiano asked Forte for his ID. Forte refused the first time he asked. After Respondent Famiano patted down Forte, he allowed Forte to take his hands down. Respondent Famiano stated that he had asked Forte multiple times for his ID and Forte was still cursing. Eventually Forte said that he had ID and gave it to Respondent Famiano. At that point, Forte was less irate and was no longer cursing. Respondent Famiano testified that he did not have to retrieve Forte's ID.

During the entire incident that Respondent Famiano was with Forte, after Respondent Famiano had passed Forte, no cars were able to come down [REDACTED] at that moment. Respondent Famiano testified that the incident with Forte was not a traffic stop. Respondent Famiano stated that "it was an interaction," or a conversation with Forte. Respondent Famiano stated that Forte was free to go after he patted him down, spoke to him and returned his ID. Respondent Famiano agreed that it was a disorderly conduct stop even though he had no intention of giving Forte a summons.

On redirect examination, Respondent Famiano started that he did not make any arrests during this incident and at the time it was not a big deal to him. Respondent Famiano agreed that the incident occurred on June 14, 2012 and he was interviewed by CCRB on May 7, 2013 regarding it. Respondent Famiano agreed that he was asked a lot of questions before he saw the video (DX 1). Respondent Famiano stated that he had very little recollection of this incident before seeing the video but he tried to do his best

to answer those questions. After seeing the video, Respondent Famiano's recollection was somewhat refreshed. Respondent Famiano was able to see the video once at CCRB. When Respondent Famiano went to his counsel's office he saw the video several times and it refreshed his recollection a little better.

In regard to the charges, the initial reason for stopping Forte was because he was double parked which is a traffic infraction. Respondent Famiano testified that the purpose of approaching Forte was because of his demeanor. Respondent Famiano stated that he frisked Forte because Forte was acting very irate and disorderly.

Respondent Famiano stated that the incident occurred in a residential, somewhat industrial high crime area. The types of crimes that go on in that area are shootings, stabbings and there is numerous drugs activity. According to Respondent Famiano, Forte's behavior was not typical behavior for a traffic infraction. Respondent Famiano stated that his initial interaction with Forte raised his suspicion.

Upon questioning by the Court, Respondent Famiano was asked if it was safe to go back and stop Forte when he had the prisoners in the van, in his estimation looking back. Respondent Famiano stated, "No." There was one window on the side of the prisoners' van and the front windows. At the time that Respondent Famiano's vehicle was behind Forte's vehicle, Respondent Famiano saw Forte walking towards the driveway. Respondent Famiano did not remember if he saw the gates open. Respondent Famiano did remember seeing Forte's car blinker on. Respondent Famiano did not see Forte gesture that he was backing up and he did not hear him say anything at that point. From the time that Respondent Famiano approached with his vehicle, he could not tell that Forte was going to back into the driveway.

Respondent Ates

Respondent Ates, a seven-and-a-half year member of the Department, is currently assigned to Brooklyn North Narcotics, where he has made approximately 200 arrests.

Respondent Ates testified that at approximately 10:00 p.m. on June 14, 2012, he and Respondent Famiano were in the prisoner van on their way to the 75 Precinct when they observed Forte's vehicle double-parked diagonally and blocking traffic. The area was known for shooting, drug and gang activity. There were four or five prisoners in the van. One of the prisoners was complaining of being claustrophobic.

Respondent Famiano, who was driving the van, honked the horn and said, "Police." At that point, Respondent Ates took off his shield to show Forte. Respondent Ates told Forte, "You need to move the car. We need to get through." Forte did not seem to care, waved his hands as if brushing off Respondents, and stated, "Who the fuck are you?" Forte proceeded to walk to the sidewalk. When Forte returned to his vehicle, Respondents again told him to move his vehicle to the side. This time Forte replied, "You fucking faggot. I don't care." By this point, Forte was guilty of blocking traffic and disorderly conduct. Respondents could have, therefore, arrested him or issued him a summons if they chose to.

Forte got back in his car and pulled over to the right-hand side. As Respondents passed Forte, Respondent Ates again displayed his shield to Forte. Forte "dropped the F bomb" on Respondents, and Respondent Ates turned to Respondent Famiano and asked in reference to Forte, "What's with this guy? What's the problem here?" Respondents decided to stop Forte's car. Respondent Ates explained the reason for the stop, "We were

not there to write a summons or arrest him or anything like that. I personally didn't understand why he was acting like that. It was like so out of the ordinary. It wasn't normal, the way he was acting."

Both Respondents walked toward the car. Respondent Ates had a flashlight in his hand. Forte exited his car before being ordered and placed his hands on the car. Before Respondent Ates could tell Forte to relax, Forte started to again use the "F bomb." Respondent Ates felt that Forte was putting on a show, and people on the sidewalk were egging him on. Respondent Ates moved to the side to keep an eye on the spectators. He did not want anyone approaching the prisoner van.

Forte gave his ID to Respondent Famiano only after both Respondents ordered him to do so. Respondent Ates did not recall Forte turning over his registration. Both Respondents decided to just warn and admonish Forte. Respondent Ates explained this decision: "Once we started speaking to him, he did calm down. He did understand that he was committing a crime or violation. . . . We explained to him what he did was wrong and we were on our way." Respondent Famiano was wearing a Department issued windbreaker. Respondent Ates did not see Respondent Famiano ever search Forte.

When asked if there was anything suspicious about Forte's behavior, Respondent Ates replied, "If I'm instructing somebody and warning them about a simple violation, normally the people that we deal with are like, okay, I'm sorry, or thank you for giving me a break. . . . [Forte, in contrast,] just wasn't having it. I actually asked him at one point, are you having a bad day? It happens. And he just wouldn't answer."

On cross-examination, Respondent Ates testified that Famiano beeped the van horn multiple times, but Forte just sat there for approximately a minute or two before

getting out of his car. Respondent Ates could not see what Forte was doing while out of the car. By the time Respondents approached him, Forte was back in the car and had reversed somewhat into the street.

Respondent Ates considered it disorderly conduct for Forte to curse at him. Respondent Ates explained, "It's some type of disorderly conduct. It's under C summons. There's an entry called I don't know off the top of my head. But there is actually a code for that, obscene language." He continued, "I never said I would go arrest someone for cursing at me. I wanted to address the condition. His condition was blocking vehicular traffic." Respondent Ates never saw Forte gesture toward his open gate. When asked if he noticed Forte's car blinker pointing to the gate, Respondent Ates replied, "His blinker was pointing to the houses because it was on an angle. It wasn't like he was double-parked right next to his house."

Respondent Ates never saw Forte reach for his waistband or any kind of weapon. Respondent Ates did not see a bulge on Forte while Forte was standing in the street. Respondent Famiano did not say anything about seeing a bulge. Respondent Ates was, nevertheless, concerned for his safety. He explained, "The way [Forte] was acting. . . that's what brought my suspicion and my fear up. . . . I didn't understand it at all, why he was acting that way." Respondent Ates had already identified himself as a police officer, though Forte did not at that point verbally acknowledge his awareness of that fact. The prisoner van had no sirens or markings.

Respondents asked Forte several times for his ID. Each time Forte became more irate. Forte placed his hands on the car after Respondent Famiano ordered him to do so. Respondent Ates did not see Respondent Famiano touch the car door. Respondent Ates

did not see Forte try to swallow anything or drop anything on the ground. When asked if there was any indication at all of drug activity, Respondent Ates replied, "Actually, now that you say that, when we were walking to the car, he was fidgeting. He was moving around in the car. If you pay attention, you can see in the video I lit the car up with the flashlight because I saw his head go down as if – not reaching or maybe just looking for something." He continued, "Cars are dangerous, in my opinion. The unknown is dangerous to me, especially if I can't see his hands." Respondent Ates acknowledged that he did not say anything in his CCRB interview about Forte moving around in the car. He explained that watching the video and reviewing his notes in preparation for trial is what refreshed his memory about Forte's movement.

Respondent Ates explained that the reason for stopping Forte was because he was blocking vehicular traffic. He wanted Forte to provide an explanation for his conduct. Instead of explaining himself, Forte was irate, combative, and highly argumentative. When asked what raised his suspicion, Respondent Ates replied, "I take that very seriously because a lot of cops get hurt, especially with automobile tinted windows. You don't see what's in the car. . . . I'm approaching a vehicle that I don't know what's in it or who's in it that's acting irate and violent in my opinion, it's kind of scary." As Respondents passed by Forte, Respondent Ates looked back to see what Forte was doing because at that point he could have been throwing something at or approaching the prisoner van. Even though Respondent Ates already had suspicion beforehand, he did not decide to stop Forte until after Forte was already back in his vehicle. At that point, Respondents could no longer see Forte's hands.

Upon questioning by the Court, Respondent Ates testified that he did not see the neighbor's car on the street. Nor did he see Forte's gate open. When asked if he saw the flashers on Forte's car, Respondent Ates replied, "I saw lights. I didn't see a flasher pointing towards his house or if he was parked up front and he left it, I would say, okay, you know what, he's probably trying to park. But no, I did not see anything like that." It did not cross his mind that Forte was trying to back into his driveway.

FINDINGS AND ANALYSIS

Both Respondents stand charged with stopping Forte's vehicle without sufficient legal authority. Respondent Famiano also stands charged with improperly frisking and searching Forte. Evidence adduced at trial through the testimony of Forte as well as the video (DX 1) of the incident proves the charges by a preponderance of the credible evidence.

Forte testified credibly that he drove up near his residence, pulling behind his neighbor's car and leaving his left signal on. He motioned with his hand and said to the driver of the van that he was pulling into his driveway. As Forte went to his vehicle and attempted to back into his driveway, the van pulled ahead. Forte testified that he uttered words to the effect to the van driver, "You should have hit me." The next thing he knew, he was ordered out of the vehicle, told to place his hands on top of the van, was frisked and searched in that Respondent Famiano removed his wallet from his pocket and removed his ID. When completed, his documents were placed on top of his vehicle and the officers left the location.

The video corroborates this account. Forte has his left turn signal light on which is flashing. Forte exits his vehicle, says some remarks to his neighbor all while continuing to his house to open the gate. Once he opens the gate, the white van is clearly seen pulling up. Forte indicates with hand motions that he is pulling into the driveway. There is no sound on the video, but the hand motions are quite apparent. As Forte gets into his vehicle and pulls up, the white van is able to and does pass him. The white van pulls up to the top of the block at a Stop sign. Both the driver and passenger side of the prisoner van are opened as Respondent Famiano (driver of the prisoner van) and Respondent Ates (passenger in the prisoner van) proceed back to Forte's vehicle. Forte is seen with his hands on the top of the car. This is consistent with his account that he did not remove his wallet but it was removed from his pockets by an officer.

Once Respondent Famiano is able to pass Forte in the prisoner van and proceed up the block, approximately one block from the station house (as testified to), there was no justification whatsoever for Respondents Famiano and Ates to park the prisoner van with prisoners inside, leaving the prisoner van unattended and return to Forte. Both testified that they had prisoners in the van that needed to be transported and at least one of the prisoners was complaining and claustrophobic. In a May 7, 2013 CCRB interview, Respondent Famiano described the need to get back to the station house as "almost an emergency." When questioned about this at trial, however, Respondent Famiano gave the following account (Transcript [Tr.] pp. 72-75):

Q It wasn't a very hot night?

A It was hot.

Q So the prisoners are in this van with no air-conditioning?

A Yes.

Q The van is like an aluminum tin can, right?

A Somewhat.

- Q So the back gets very hot, right?
- A It can get very hot.
- Q And there were more than one prisoner. I think you said there were approximately five back there, right?
- A I don't know the exact number.
- Q More than one?
- A Yes, there was more than one.
- Q Probably more than two?
- A Possibly.
- Q So at least two people in the back. It's very hot. There's no air-conditioning. At least one of the prisoners was complaining about being claustrophobic that night, right?
- A Yes.
- Q So, it was basically almost an emergency to you to get him back to the precinct, right?
- A It was a situation that we had to get back to the precinct.
- Q It was almost an emergency to you, right?
- A I don't know about that....
- Q Okay. So you are saying that despite the fact that you said it was almost an emergency and you had a bunch of prisoners in a hot, hot van, it wasn't important to get them there quickly?
- A It was important to get them there.
- Q It was important to get them there quickly is what you said [in your CCRB interview].
- A Okay. It was important to get them there then.
- Q Was it important to get them there quickly, yes or no?
- A No.

This was just one of several examples of Respondent Famiano's unwillingness to answer straightforward cross-examination questions. Another example was a line of questioning concerning his intention to issue Forte a summons. In his CCRB interview, he clearly stated that he had no intention of issuing a summons. When questioned at trial, however, he gave the following responses (Tr. pp. 100-102):

- Q So you are now with your prisoners at the end of the block close to the precinct and you decide you are going to get out and go speak to him about the traffic infraction, right?
- A And for him acting disorderly.
- Q And was he acting so disorderly that you were going to issue him a summons for it?
- A It could have been possible.

- Q But were you going to issue a summons?
- A It depends on his demeanor --
- Q Isn't it --
- A -- when I was speaking to him.
- Q Isn't it true you had absolutely no intention of issuing him any summonses when you got out of that vehicle?
- A It all depends, Ma'am.
- Q I'm asking you -- not it all depends, I'm saying, on June 14, 2012, at 10 p.m., when you got out of your P van and walked back to Mr. Forte, isn't it true that at that moment, when you approached him in his van, you had no intention of issuing him a summons?
- A It all depends. I said, it all depends. It's not necessarily no or yes. [At this point in the questioning, Respondent Famiano was confronted with his CCRB statement.]
- Q At the time. So you stopped at the end of the block, you opened the door to the P van a block from the precinct with these prisoners at the end of the hot shift and you left your door open, at least your door opened, and walked back to speak to Mr. Forte with no intention of giving him a summons, right?
- A It was all depending on his interaction with me.
- Q Well, that wasn't your testimony [at CCRB]. But okay. [At this point, the Court instructed Respondent Famiano to answer direct questions with a yes or no answer.]
- A At that particular moment, no.

It was not until the court questioned Detective Famiano directly that in retrospect did he see that his action of stopping the prisoner van to go back to Forte was wrong, that he answered honestly (Tr. pp. 133-134):

- Q Detective Famiano, was it safe to go back and stop Mr. Forte when you had the prisoners in the van, in your estimation, looking back?
- A No.
- Q Did the prisoner van have windows? Other than the front window, were there windows in this van?
- A There is a window on the side.
- Q More than one?
- A No.

What is most troubling about both Respondents' accounts not only to the CCRB but also as they testified before this Court is that none of what they claimed happened is evident on the video of the incident. They allege that they were honking their horn in the

white van and Forte refused to move. They also allege that this took place before the video captured the incident. However, prior to the incident with Forte, his neighbor pulled up to the incident location and cars were able to drive by, so there was no way that Forte's vehicle was impeding traffic at that time as Respondents' beeped their horn repeatedly. There is also no indication that Forte was hurling profanity at Respondents as they both testified to including "fuc--ing faggots" at Respondents. In fact, if the video is viewed to the end, Forte parks his vehicle in his driveway and does not slam his gate closed following the incident, but gently closes his gate. Indicative of a calm demeanor as he exuded when he testified in Court.

The Respondents, on the other hand, talked over the CCRB Prosecutor, had to be instructed to answer the questions posed, and to answer a yes or no question with a yes or no answer. Because Respondents left prisoners in the prisoner van unattended as they approached Forte for no legitimate reason, and because of Respondent Famiano and Respondent Ates's lack of candor when testifying before this Court, it is recommended that they forfeit additional penalty days.

Accordingly, Respondents are found Guilty.

PENALTY

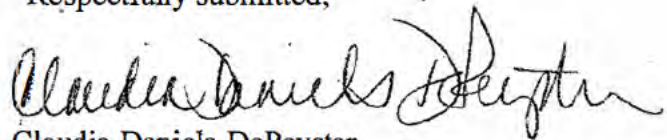
In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Ates was appointed to the Department on January 10, 2007. Respondent Famiano was appointed on January 10, 2005. Information from their personnel records that was

considered in making this penalty recommendation is contained in attached confidential memoranda.

Both Respondents have been found Guilty of stopping Forte's vehicle, ie. a car stop, without sufficient legal authority. Respondent Famiano has also been found Guilty of improperly frisking and searching Forte. In *Case No. 84356/08* (Dec. 14, 2010), a ten-year detective with no prior disciplinary record forfeited five vacation days for conducting a car stop without legal justification. In *Case No. 2013-9648* (Jun. 17, 2014), a six-year police officer with no prior disciplinary record forfeited eight vacation days for conducting an unjustified frisk and search of complainant. CCRB asked for a penalty of no less than eight vacation days for both Respondents. For the reasons discussed above, the Court believes that Respondents should be penalized more severely than members of the service who have committed similar misconduct.

Accordingly, it is recommended that Respondent Ates forfeit ten vacation days and that Respondent Famiano forfeit 15 vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

APPROVED

JAN 30 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

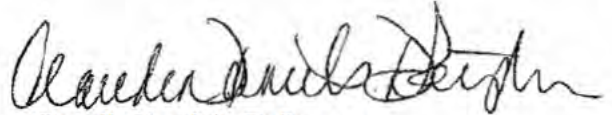
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE EMRAH ATES
TAX REGISTRY NO. 942967
DISCIPLINARY CASE NO. 2013-10683

In 2014, Respondent Ates received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his annual performance evaluation. He was rated 3.0 "Competent" and 4.0 "Highly Competent" on his two previous evaluations. He has been awarded three medals for Excellent Police Duty. [REDACTED]

[REDACTED] He has no prior formal disciplinary record.

For your consideration.



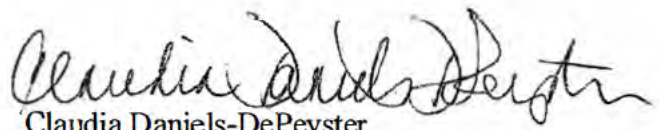
Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE JAMES FAMIANO
TAX REGISTRY NO. 936568
DISCIPLINARY CASE NO. 2013-10682

In 2014, Respondent Famiano received an overall rating of 4.0 "Highly Competent" on his annual performance evaluation. He was rated 3.0 "Competent" and 3.5 "Highly Competent/Competent" on his two previous evaluations. [REDACTED] He has no prior formal disciplinary record.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials